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DEC 06 2004

OFFICE OF PETITIONS

In re Application of

Lapstun and Silverbrook

Application No. 09/459,409

Filed: December 11, 1999

Attorney Docket No. CEOP04-US

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), November 8, 2004, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to final Office action mailed September 24, 2003. The notice allowed a shortened statutory period for reply of three months from its mailing date. No response was received within the allowed period, and the application became abandoned on December 25, 2003. A Notice of Abandonment was mailed on October 15, 2004.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (2) above.


As to item (2), the petition fee of \$1370.00 (small entity) was not with the petition papers. A check in the amount of \$2,120.00 was found of which \$790.00 was used to satisfy the fee for the Request for Continued Examination. The remaining amount of \$1330.00 is not sufficient to cover the petition fee of \$1370.00. Any renewed petition must be accompanied by the outstanding amount of \$40.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-0025
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3222.


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